

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

**TRENICE M. REED AND
KENNETH REED,**

Plaintiffs,

v.

**EK REAL ESTATE SERVICES OF NY
LLC, ET AL.,**

Defendants.

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CIVIL ACTION NO. 4:21-CV-03713

**DEFENDANTS' JOINT MOTION FOR ASSESSEMENT
OF RULE 11 FEES AND COSTS AND BRIEF IN SUPPORT**

TO THE HONORABLE JUDGE OF SAID COURT:

As detailed in Defendants' contemporaneously-filed Verified Motion to Abate and Brief in Support ("Motion to Abate") [Doc. #22], Plaintiffs failed to give pre-suit notice as required by the Texas DTPA and Finance Code. Because this tactic is intentional and violates Rule 11, the Court should assess fees and costs against Plaintiffs' counsel.

Plaintiffs' attorneys have now filed 19 suits against the Defendants across Texas. [See Doc. # 21 Pls.' Notice of Related Cases].¹ Not one time have they given pre-suit notice as required. See Ex. 1, Davis Decl. The inescapable conclusion is that this tactic is intentional and being employed to harass, cause delay, and/or increase the Defendants' litigation costs. Furthermore, contentions in the Complaint—including that notice is not required—are not warranted by existing law or a non-frivolous argument for extending or modifying existing law. Nor do these contentions have any evidentiary support. Whatever the case, this tactic is a violation of Rule 11. Plaintiffs' counsel have refused to cure the violation. See Ex. 1, Davis Decl.

¹ Four additional cases have been filed by Plaintiffs' counsel since the date Plaintiffs filed this Notice.

As the Supreme Court of Texas has recognized:

The initiation of litigation without notice may have effects other than denying the parties a pre-suit opportunity to negotiate. It may polarize the parties and prejudice their discussions. It may also result in expense to the defendant in filing an answer, requesting abatement, and otherwise responding to the litigation. ***If such effects actually occur, the trial court is empowered to remedy them by appropriate sanctions under Rule 13.***

Hines v. Hash, 843 S.W.2d 464, 467 (Tex. 1992) (emphasis added).

Here, Plaintiffs' failure to give pre-suit notice has forced Defendants to file numerous motions in this and other similar cases. It has likewise caused Defendants to incur expenses related to otherwise responding to the litigation. Accordingly, the Court should assess against Plaintiffs' counsel Defendants' attorneys' fees and costs incurred as a result of their failure to comply with the pre-suit notice requirements—including expenses incurred in connection with the Motion to Abate and this motion, as well as other expenses incurred to-date as a result of responding to the litigation. This proposed sanction is “limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated.” Fed. R. Civ. P. 11(c)(4); *Id.*

Dated: February 9, 2022

Respectfully Submitted,

GRAY REED

/s/ Chris Davis

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ATTORNEYS FOR DEFENDANT LENDINGONE, LLC

CERTIFICATE OF CONFERENCE

Between February 7th and 9th 2022, Defendants' counsel communicated extensively with Plaintiffs' counsel regarding the Motion to Abate and this motion. The parties were unable to reach agreement.

/s/ Chris Davis

Chris Davis

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9th day of February 2022, he caused a true and correct copy of the foregoing document to be filed via the Court's CM/ECF system, which will send a copy of the same to all counsel of record.

/s/ Chris Davis

Chris Davis

